

PRESIDING MEMBERS PROPOSED DECISION
AND COMMITTEE CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	
)	
Application for)	
Certification for)	Docket No.
The Palen Solar)	09-AFC-7
Power Project)	
_____)	

CALIFORNIA ENERGY COMMISSION

HEARING ROOM A

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

THURSDAY, DECEMBER 2, 2010

1:08 P.M.

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APPEARANCES

COMMITTEE MEMBERS PRESENT

Robert Weisenmiller, Presiding Member

Karen Douglas, Associate Member

HEARING OFFICER AND ADVISERS

Raoul Renaud, Hearing Officer

Eileen Allen, Advisor

Galen Lemei, Advisor

STAFF AND CONSULTANTS PRESENT

Alan H. Solomon, Project Manager

Lisa De Carlo, Staff Counsel

Jennifer Jennings, Public Adviser

Susan Lee

Susan Sanders

Willaim Walters

Brian Ye

APPLICANT

Solar Millennium, LLC

Scott Galati

Alice Harron

Michael Cressner

APPEARANCES CONTINUED

INTERVENORS

Kevin Emmerich (telephonic)
Basin and Range Watch

Lisa Belenky
Center for Biological Diversity

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1 PROCEEDINGS

2 COMMISSIONER WEISENMILLER: Good afternoon. This
3 is the hearing for the solar power project.

4 I'm the assigned Commissioner, Commissioner
5 Weisenmiller. To my left is my advisor, Eileen Allen. To
6 my right is the Hearing Officer, Raoul Renaud. And the
7 Chair, Karen Douglas is the second member. And her
8 advisor, Galen Lemei, isn't here.

9 In addition, we have the public advisor here,
10 Jennifer Jennings in the back, if any parties here are
11 looking for help in participating.

12 And at this point, we'll take introductions from
13 the parties. Staff?

14 MS. DE CARLO: Thank you. Good afternoon. Lisa
15 de Carlo, Energy Commission staff counsel. To my left is
16 Alan H. Solomon, Energy Commission project manager

17 We also have Susan Sanders, our biological
18 consultant for Energy Commission staff in the audience in
19 case the Committee has any specific questions on biology.
20 And we may have some staff on the phone as well.

21 COMMISSIONER WEISENMILLER: Applicant?

22 MR. GALATI: Scott Galati representing Palen
23 Solar I, Solar Millennium.

24 MR. CRESSNER: Michael Cressner, Solar
25 Millennium.

1 MS. HARRON: Alice Harron, Solar Millennium.

2 COMMISSIONER WEISENMILLER: On the line -- let me
3 turn it back to the Hearing Officer for the parties on the
4 line.

5 HEARING OFFICER RENAUD: Thank you, Commissioner
6 Weisenmiller.

7 This is Raoul Renaud, the Hearing Officer.

8 We are using our Web Ex teleconference system in
9 conjunction with this hearing today, which allows members
10 of the public and parties to phone in and participate
11 remotely.

12 Let me ask first if we have any parties on the
13 line. I understand, Ms. Belenky, are you there?

14 MS. BELENKY: Yes. This is Lisa Belenky for the
15 Center for Biological Diversity.

16 It's extremely hard to hear anything anyone is
17 saying. There is an incredible amount of static on the
18 line.

19 HEARING OFFICER RENAUD: Thank you. Our Web Ex
20 people are working on that. Please bear with us. We'll
21 try to get that cleared up.

22 Let's see. Is there any representative from CARE
23 on the line?

24 Intervenor CARE? No. All right.

25 Any representative from intervenor Basin and

1 Range Watch?

2 MS. CUNNINGHAM: Hello. This is Laura Cunningham
3 and Kevin Emmerich.

4 And the static is really loud. Can you hear me?

5 HEARING OFFICER RENAUD: We can hear you very
6 well, thank you. And we are working on the static
7 problem. Sorry for the inconvenience.

8 And do we have representatives of any government
9 agencies on the phone?

10 MR. YE: Yes. This is Brian Ye with the South
11 Coast Air Quality Management District.

12 HEARING OFFICER RENAUD: Thank you, Mr. Ye.

13 Anyone else?

14 Anyone else who wishes to introduce themselves
15 from the telephone lines?

16 MS. LEE: Susan Lee, staff for alternatives. I'm
17 on the phone.

18 HEARING OFFICER RENAUD: Thank you for joining
19 us.

20 Anyone else?

21 MR. WALTERS: William Walters, staff for air
22 quality and greenhouse gas.

23 HEARING OFFICER RENAUD: Thank you for joining
24 us.

25 Anyone else?

1 All right. Very good. Thank you.

2 We also have in the room Jennifer Jennings, our
3 Public Advisor. And I believe that completes the
4 introductions.

5 All right. This is a conference that we call a
6 Committee conference, the purpose of which is to discuss
7 the Presiding Member's Proposed Decision, which in this
8 case was issued on November 12th, 2010.

9 Upon issuance of a Presiding Member's Proposed
10 Decision, which we call a PMPD, a 30-day public comment
11 period begins to run. At the time we issued the PMPD, we
12 asked the parties to submit their comments by November 29,
13 and that was last Monday. And we received comments from
14 the applicant, from staff, and from CBD. And we thank you
15 very much for those comments.

16 The purpose of today's conference is to discuss
17 those comments, to discuss any other matters pertaining to
18 the PMPD. And in addition, we notice this as an
19 evidentiary hearing for the purpose of taking in some
20 cleanup evidence pertaining to air quality, a couple of
21 exhibits that we didn't put into the record at the last
22 hearing. And since we just received the air district's
23 final determination of compliance, which is dated December
24 1st, there will be some testimony regarding that as well.

25 In addition, yesterday, the Committee issued its

1 recommended or proposed override findings, and those will
2 be available for discussion as well.

3 I think perhaps the way to proceed is to ask the
4 parties first if they all had an opportunity to review the
5 comments submitted by the other parties.

6 Applicant, have you?

7 MR. GALATI: Yes, we have. We're prepared to
8 comment.

9 HEARING OFFICER RENAUD: Staff.

10 MS. DE CARLO: Yes, we have.

11 HEARING OFFICER RENAUD: CBD, Ms. Belenky, have
12 you had an opportunity to review the comments of the other
13 parties?

14 MS. BELENKY: I'm sorry. I couldn't tell what
15 you were asking.

16 HEARING OFFICER RENAUD: The question is have you
17 had an opportunity to review the comments submitted by
18 staff and applicant pertaining to the PMPD?

19 MS. BELENKY: I did have a very short amount of
20 time to look at staff's. I have not had an opportunity
21 yet to look at the comments submitted by the applicant.

22 HEARING OFFICER RENAUD: All right.

23 Well, let's begin today by giving each party an
24 opportunity to highlight for the Committee anything that's
25 set forth in their comments that they'd perhaps like to

1 elaborate on and then also to comment on the comments of
2 the others, for example, whether or not you agree with
3 someone else's comment or wish to add to it.

4 I think we'll begin with the applicant, Mr.
5 Galati. Is there anything about the applicant's comments
6 you'd like to discuss? And is there anything you wish to
7 mention or tell us about the comments of the other
8 parties?

9 MR. GALATI: With respect to our comments, they
10 primarily are catches that we thought were already in the
11 record that we wanted some minor changes to. So unless
12 the Committee had any questions, I wasn't going to go
13 through them. I don't think there is anything remarkable
14 about any of them.

15 And then with respect to staff's comments, we
16 reviewed staff's comments on the PMPD, and we agree with
17 them all.

18 And then we have reviewed CBD's comments, and we
19 disagree with several of those. The primary one that I'd
20 like to address you on is the contention that the
21 Warren-Alquist Act requires BLM to approve our project
22 before the Energy Commission can act. And I think that
23 there is an assumption. This is the first comment where
24 CBD is referencing Public Resources Code 25527, which when
25 you read that section, that section is intending from my

1 perspective -- and I think from a legislative
2 perspective -- intending to stop projects from building in
3 areas that are set aside and protected for the sole
4 purpose of wildlife from being approved by the Energy
5 Commission, since it has the sole State authority, without
6 the agency who's managing or owns that property giving
7 approval of that. CBD goes on to say that the Palen
8 project is on property like that, and we disagree. The
9 project is not within a DWMA. The project is not within
10 an ACEC. The project is within a multi-species wildlife
11 habitat management area, or a WHMA. That particular
12 multi-species wildlife management area allows for multiple
13 use development. So it is not an area set aside for the
14 sole purpose of wildlife protection. In fact, the only
15 management action in that area is to reduce off-road use.
16 So that's not the obviously what the Legislature intended.

17 And then lastly, they have identified critical
18 habitat as somehow also being such wildlife area protected
19 for use. We have worked since day one with the agencies,
20 and there is a portion of the project that is in critical
21 habitat. And as the Committee is aware, we are mitigating
22 at a higher ratio for that particular habitat. All the
23 agencies, including BLM, have approved that ratio. So we
24 do not believe that this section precludes the Energy
25 Commission from granting a license until BLM issues a

1 right of way.

2 And I think that's really the only issue that we
3 wanted to address from CBD's comments.

4 HEARING OFFICER RENAUD: Thank you.

5 Ms. Belenky, would you care to respond to Mr.
6 Galati's response to CBD's comments?

7 MS. BELENKY: Yes. I'm sorry. I couldn't hear
8 every single word, but I think I got the gist of it.

9 I think that, if I understand correctly, Mr.
10 Galati is reading in a provision that doesn't exist, as
11 far as I can see, in the Public Resources Code Section
12 25527. It does not say that the areas have been set aside
13 exclusively for wildlife protection. That is not -- that
14 is not what this statute says. It says areas -- these
15 areas, including some areas that -- for example, areas for
16 wildlife protection, recreation, historic preservation, or
17 natural preservation areas in existence. It does not say
18 exclusively.

19 Because it is clear that the -- first of all, the
20 Center would certainly argue that actually the entire CECA
21 is within this. But even putting that aside, because it
22 is a California desert conservation area and was clearly
23 established in part for conservation for other wildlife
24 and other resources. Putting that aside, even if we would
25 only say more specific areas, this project clearly is in

1 specific areas that have been identified for public
2 protection of wildlife, DWMA, and the project is in the
3 WHMA that is for desert tortoise connectivity and the
4 project also includes critical habitat.

5 So I think all of these areas clearly are areas
6 that are for protection and preservation of wildlife and
7 other natural resources. And I do not think that the --
8 that there's anything in the statute that would exclude
9 these areas from this section and requirement.

10 So I guess there's pretty much all I can say on
11 the phone with all the static. It's a little hard to
12 hear.

13 HEARING OFFICER RENAUD: Thank you very much for
14 that. I think we understand the positions of the
15 applicant and CBD on that. And the Commission will take
16 those arguments and assertions under advisement.

17 Ms. Belenky, I just want to assure you that
18 although you may be having a hard time hearing us, we have
19 no problem hearing you. You're crystal clear. So rest
20 assured at least that you're coming through loud and clear
21 on this end. And we are working on clearing up the static
22 for listeners.

23 MS. BELENKY: Thank you.

24 HEARING OFFICER RENAUD: Thank you.

25 Okay. Let's move to staff. Anything you would

1 wish to highlight for the Committee regarding staff's
2 comments or respond to comments of others?

3 MS. DE CARLO: Most of our comments were
4 clarifying or correcting the record.

5 I do want to call the Committee's attention to
6 those areas where we incorporated the FDOC changes that we
7 identified from the South Coast Air Quality Management
8 district's publication of the FDOC yesterday. We have a
9 few comments in our filing on November 29th regarding
10 that.

11 We also have a supplemental additional staff
12 testimony on air quality that we filed on December 1st
13 more fully incorporating the FDOC. And those two have
14 declarations by Will Walters. And at the appropriate
15 time, we would like to enter those into the record, as
16 well as the district's final determination of compliance.

17 HEARING OFFICER RENAUD: Okay. Well, I think
18 this would be a good time to do that, since we're on the
19 topic. I have, I believe, two declarations of Mr.
20 Walters, one dated yesterday and one dated a couple days
21 before that.

22 MS. DE CARLO: Yes. November 29th.

23 HEARING OFFICER RENAUD: Do you want to enter
24 them both?

25 MS. DE CARLO: Yes, please.

1 HEARING OFFICER RENAUD: All right. And then we
2 have -- let's see supplemental testimony of Mr. Walters,
3 two different ones again. You want to enter both of
4 those?

5 MS. DE CARLO: Yes, please.

6 HEARING OFFICER RENAUD: All right.

7 MS. DE CARLO: If you want me to explain the
8 first supplemental testimony that we entered on November
9 129th, that's with regard to the gas tank that the
10 applicant is proposing to use. There was some change in
11 terms of the sizing. So the applicant's determined to
12 only use 250 gallons or less, which brings it outside the
13 scope of South Coast regulations. So, therefore, we
14 wanted to include a Condition of Certification to ensure
15 that it still complied.

16 HEARING OFFICER RENAUD: Very good.

17 And we've received word from the applicant that
18 you have no objection to that revised condition?

19 MR. GALATI: That is correct.

20 HEARING OFFICER RENAUD: Thank you.

21 And then the more recent one?

22 MS. DE CARLO: Yeah. The December 1st filing is
23 incorporating the changes from the final determination of
24 compliance.

25 HEARING OFFICER RENAUD: And that did affect a

1 number of the Conditions of Certification. And we will be
2 incorporating those into the errata, too, to bring that up
3 to date.

4 Is there any objection to entering the two
5 declarations and the two supplemental testimonies of Mr.
6 Walters into evidence?

7 MR. GALATI: No objection from the applicant.

8 HEARING OFFICER RENAUD: Any objection from CBD?

9 MS. BELENKY: I'm sorry. I actually couldn't
10 hear everything she was saying as far as the staff moving
11 in their exhibits. I couldn't actually discern --

12 HEARING OFFICER RENAUD: All right. What it is
13 is the two supplemental testimony documents from Mr.
14 Walters and the two declarations from Mr. Walters, the
15 earlier one dated November 29th pertaining to the gasoline
16 storage tank being reduced in size and the second one
17 dated December 1st pertaining to the just issued final
18 determination of compliance.

19 MS. BELENKY: Okay.

20 HEARING OFFICER RENAUD: And the motion is to
21 enter those into evidence.

22 MS. BELENKY: Yes. Thank you. No objection.

23 HEARING OFFICER RENAUD: Thank you.

24 Any objection from Basin and Range Watch?

25 MR. EMMERICH: No objection

1 HEARING OFFICER RENAUD: CARE, have you joined
2 us? No.

3 All right. So those will be admitted.

4 I believe we'll mark them as Exhibit 321. We'll
5 make that a group Exhibit 321.

6 (Thereupon Exhibit 321 was marked for
7 identification and received into evidence by the
8 Hearing Officer.)

9 HEARING OFFICER RENAUD: We also had reserved
10 Exhibit 320 for the FDOC. And we will -- let me just ask
11 if anybody objects to that being entered into evidence as
12 Exhibit 320.

13 MR. GALATI: No objection from the applicant.

14 HEARING OFFICER RENAUD: Okay. Staff of course
15 not, since you're the sponsor of it.

16 CBD, any objection?

17 MS. BELENKY: No objection to the FDOC being
18 admitted as evidence, no.

19 HEARING OFFICER RENAUD: Thank you. And Basin
20 and Range Watch?

21 MR. EMMERICH: No objection.

22 HEARING OFFICER RENAUD: Thank you, very much.
23 That will be admitted and marked Exhibit 320.

24 (Thereupon Exhibit 320 was marked for
25 identification and received into evidence by the

1 Hearing Officer.)

2 HEARING OFFICER RENAUD: Before we move on from
3 that, did any party wish to ask questions of Mr. Walters
4 regarding his newly filed testimony in the air quality
5 area? Provide that opportunity.

6 MR. GALATI: No questions from the applicant.

7 HEARING OFFICER RENAUD: All right. Any
8 questions from CBD or Basin and Range Watch?

9 MS. BELENKY: I'm sorry. I haven't had a chance
10 to fully review that document yet, so I don't have any
11 questions.

12 HEARING OFFICER RENAUD: All right. Thank you.
13 Well, there will be an additional opportunity for oral
14 comment at the Commission adoption hearing on December
15 15th. So if you have any questions that arise between now
16 and then, we'll be able to bring those up at that time.

17 Okay. Let's see. We also had kind of clean
18 up -- well, I am sorry. Let me ask if staff has anything
19 further before we move on to other things.

20 MS. DE CARLO: With regard to the applicant's
21 comments, staff is in agreement, except for their proposed
22 change to Bio 18. We don't think that's necessary. We
23 think that the condition is fine as it reads now.
24 However, if the Committee would like to make that change,
25 we wouldn't vociferously object. We just don't think it's

1 completely necessary.

2 And then with regard to CBD's comments on the
3 PMPD, I have Susan Lee available on the phone to address
4 the alternatives comments, if the Committee has any
5 particular desire to hear staff's response, as well as
6 Susan Sanders here to address the biological resources
7 comments.

8 I would note with regard to the legal argument
9 concerning the 25527, we agree with the applicant that
10 CBD's interpretation is overbroad and that the statutory
11 prohibition does not apply in this case.

12 HEARING OFFICER RENAUD: All right. Thank you
13 very much.

14 The CBD comments regarding alternatives basically
15 I'd say largely address the distributed generation
16 alternative, and I think the Committee understands those
17 arguments pretty well.

18 Anybody have any questions of Ms. Lee?

19 No. Okay. Thank you though for bringing her and
20 making her available for us.

21 Let's see here. Now, as far as the static is
22 concerned, I understand we have an opportunity here to
23 clear that up if we can mute all the mikes. So that would
24 be these five up here. So parties on the phone, people on
25 the phone, just stand by. We're going to try to clear up

1 the static for you. Hold on. Everybody make sure their
2 mike is off.

3 (Thereupon there was a pause in the proceedings.)

4 HEARING OFFICER RENAUD: All right. We're back.
5 Everybody you can use your mike again.

6 Ms. Belenky, is that better?

7 MS. BELENKY: Yes. The terrible static seems to
8 be gone. The sound quality is not very good, but the
9 static seems to be gone.

10 HEARING OFFICER RENAUD: Thank you very much.
11 There is at least one caller who is rustling papers. And
12 I understand you need to rustle papers, but if you could
13 perhaps move it away from your phone, we would appreciate
14 that.

15 Let's see where we were. Okay. Staff, is there
16 anything further you wish to add on any topic?

17 MS. DE CARLO: No. Nothing. But, again, Susan
18 Sanders is available if you had any questions on CBD's
19 arguments with regards to biological resources.

20 HEARING OFFICER RENAUD: Okay. Let's turn to CBD
21 and ask if CBD has anything to speak to the Committee
22 about regarding your own comments or the comments of
23 others.

24 MS. BELENKY: Well, like I said, I haven't had a
25 chance to read through all of the comments of the

1 applicant. We did read the -- I did read through the
2 comments from staff briefly.

3 As far as -- I mean, I'm not sure what I can add
4 about the statutory requirement. I do not think our
5 interpretation is overbroad. If anything, it is narrow.
6 The Committee -- the Commission has, you know -- and
7 staff, in particular, have raised the issue of site
8 control in many other of these matters. And in here, we
9 think there is clearly no ability to show site control at
10 this stage. So I don't see how the Commission can go
11 forward with approval. And more than that, because of the
12 statutory requirements for areas that are set aside for
13 wildlife and other natural preservation, I just -- we
14 don't know how that Commission can go forward at this
15 time.

16 And we would be happy to provide additional
17 briefing on those questions. The Committee did not ask
18 for any briefing, and so it has not been fully briefed.
19 We can certainly provide additional briefing on these
20 questions. And particularly what is the status of these
21 lands under federal law, which I am not sure is here,
22 to -- perhaps is not clear to all of the parties and to
23 the Committee.

24 So that would be -- and other than that, I think
25 they've been pretty fully briefed, the issues on the

1 alternatives. The Center did want to move into evidence
2 the two additional exhibits which were provided.

3 HEARING OFFICER RENAUD: Yes, 669 and 670. Is
4 there any objection from any party regarding these two
5 exhibits?

6 MR. GALATI: No objection from the applicant.

7 MS. DE CARLO: No objection from staff.

8 HEARING OFFICER RENAUD: Thank you.

9 Basin and Range Watch, any objection?

10 Basin and Range Watch, are you there?

11 MS. CUNNINGHAM: Basin and Range Watch, no
12 objections.

13 HEARING OFFICER RENAUD: Thank you.

14 Those be will be admitted, Exhibits 669 and 670.

15 Those were docketed under CEC docket number
16 58927.

17 (Thereupon Exhibits 669 and 670 were received
18 into evidence by the Hearing Officer.)

19 HEARING OFFICER RENAUD: While we're admitting
20 evidence into the record, we have noted admitting --
21 making the formal gesture of admitting applicant's opening
22 testimony and air quality soil and water resources docket
23 number 58794. Do you still wish to move those into
24 evidence?

25 MR. GALATI: Yes, I do. That's marked as Exhibit

1 65. I apologize I didn't move that into evidence at the
2 last hearing.

3 HEARING OFFICER RENAUD: All right. Is there any
4 objection?

5 MS. DE CARLO: No objection from staff.

6 HEARING OFFICER RENAUD: Any objection from CBD?

7 MS. BELENKY: No objection -- on the air quality,
8 is that right?

9 HEARING OFFICER RENAUD: Right. Applicant's
10 opening testimony on air quality and soil and water
11 resources.

12 MS. BELENKY: Right. That's fine.

13 HEARING OFFICER RENAUD: Thank you.

14 Basin and Range Watch?

15 MS. CUNNINGHAM: No objection.

16 HEARING OFFICER RENAUD: All right. Thank you.

17 (Thereupon Exhibit 65 was received
18 into evidence by the Hearing Officer.)

19 HEARING OFFICER RENAUD: Good. Let's turn now to
20 you, Basin and Range Watch, while we've got you. Do you
21 wish to comment on any of the parties' comments? You
22 didn't submit written comments, but if you'd like to
23 comment on any of the other parties' comments, this would
24 be the time to do that.

25 MS. CUNNINGHAM: We don't have any comments.

1 Thank you.

2 HEARING OFFICER RENAUD: All right. Now, a
3 question that came to mind for the Committee in reviewing
4 these comments was CBD's concern that -- let me back up
5 and state, first of all, that the PMPD proposes to approve
6 two alternative sites: Reconfigured alternative two and
7 reconfigured alternative number three. CBD states in
8 their comments that that impermissibly cedes discretionary
9 authority from the Commission to the applicant. And in
10 reading that, we didn't see any legal authority for the
11 argument. But I wondered if we could ask CBD, is there
12 legal background for authority for that assertion?

13 MS. BELENKY: You know, I was in a rush.

14 There is actually quite a bit of authority for
15 the fact that agencies cannot cede their discretion.

16 I have not had time to do that briefing on this
17 very short time scale. And, again, the Committee did not
18 ask for any briefing. I would be happy to provide a
19 briefing on that question.

20 HEARING OFFICER RENAUD: All right. Applicant,
21 would you wish to comment on that?

22 MR. GALATI: Yes. There is quite a bit of
23 authority on an agency ceding its authority and
24 jurisdiction. That's not what we have here. So for a
25 factual perspective, the Energy Commission has evaluated

1 fully two projects.

2 Let me put this into context. Basically, one
3 project -- we can draw a footprint around both projects
4 and we can develop within that footprint. That's
5 basically what's being approved. The Energy Commission
6 has -- and so has the environmental groups a very strong
7 preference of using private land when possible. And so in
8 an effort to mitigate and minimize impacts to the sand
9 transport corridor as we move closer and closer to this
10 piece of private property, we thought if we were able to
11 acquire that piece of private property that would further
12 be a configuration that might be acceptable.

13 And so far, all of the agencies, including BLM,
14 have agreed that's an appropriate way to go. It
15 accomplishes a very strong environmental goal. And as
16 long as all the impacts are identified for both, we think
17 that you can. You're not ceding your authority. You're
18 actually granting approval to build either one of the
19 projects, which both have been fully evaluated and both
20 are fully mitigated. And your findings and findings of
21 override are for both.

22 Let's just make it really clear; we can only
23 build one of those two. We will not build both. And
24 that's what your decision says. And we think you can.

25 I think the confusion is from a NEPA perspective

1 when something is identified as an alternative and the
2 agency needs to select a preferred alternative that that
3 preferred alternative at some point in time -- another
4 alternative what we need to do to do another alternative
5 that wasn't preferred. That's a completely different
6 scenario, and we believe you have the full authority to do
7 that.

8 HEARING OFFICER RENAUD: Thank you.

9 Staff, you wish to comment on that?

10 MS. DE CARLO: I agree with Mr. Galati. The
11 Energy Commission's evaluated the environmental impacts of
12 both alternatives, has made findings with regards to both
13 alternatives, has made findings with regard to the LORS
14 compliance with both alternatives. And I think it is
15 within the discretion of the Energy Commission to approve
16 either alternative. We have done so in the past with
17 regard to linears. I don't see why a site-specific
18 approach similarly wouldn't be as acceptable.

19 HEARING OFFICER RENAUD: Thank you.

20 CBD, any response to that?

21 I think Mr. Galati identified what the real
22 question is, and it's more of a factual question than a
23 legal one. It's in what way does this approval of two
24 alternatives within the same footprint constitute a ceding
25 of authority.

1 MS. BELENKY: I would like to respond to several
2 things that were stated. First of all, Mr. Galati does
3 not speak for the environmental group, and he certainly
4 does not speak for the Center for Biological Diversity.

5 We do not have a preference for building on
6 private land. We have a preference for building on lands
7 that are previously disturbed. That is not what we're
8 talking about necessarily here. And in any case, that is
9 not what this issue is about.

10 This issue is about a more compact footprint.
11 And if they can achieve purchasing or an occupational,
12 whatever, to use that land, they will have a more compact
13 footprint. And that is better apparently for the company.
14 And that's fine. And we generally think more compact may
15 be a good thing. That's not the issue.

16 The issue is that the -- here is that we feel the
17 alternatives have not been fully evaluated. We agree to
18 the extent that this evaluation has been adequate, which
19 we do not concede, then they have both been fully
20 evaluated.

21 The question is can the Commission approve two
22 different projects and allow the project proponent to
23 choose later after the approval which one it will build.
24 And we do not think that is allowable.

25 If it is framed differently as within this larger

1 footprint you can either move this piece over here or move
2 this piece over there, that is a different question. And
3 I don't think that's how it has been framed.

4 Now, it may be possible to approve something
5 called the alternative two/three that would have some
6 amount of ability to change. But that change still needs
7 to be approved by the Commission. It has to be the
8 Commission that approves the project. And the project can
9 only be one thing.

10 HEARING OFFICER RENAUD: All right. Thank you.
11 I think we understand your position, and we thank
12 applicant and staff for their discussion on that.

13 Basin and Range Watch, would you care to weigh in
14 on this at all?

15 MS. CUNNINGHAM: Yeah. Laura Cunningham.

16 We actually agree with Center for Biological
17 Diversity. And we think that the Energy Commission is
18 giving two choices after approval short changes the public
19 from seeing what the actual project will look like because
20 there's still two choices. So we disagree that that
21 should be approved. There should be a final alternative
22 decision.

23 HEARING OFFICER RENAUD: Okay. Thank you.

24 CARE, have you joined us? CARE? No. All right.

25 I just want to make sure I gave all the parties

1 an opportunity to comment on this issue.

2 Is there anything else any party wishes to raise
3 before the Committee at this Committee conference on the
4 PMPD? I'm not hearing anyone. All right.

5 The next steps in our procedure are as follows.
6 The Committee will take stock of the comments made by the
7 parties and public and incorporate those into the document
8 which we call an errata. The errata is a document that
9 basically makes changes to the PMPD. And if the PMPD and
10 errata are adopted by the full Commission, then those
11 changes are incorporated into the document which becomes
12 the final decision. The items in an errata generally are
13 not -- should not be substantive to the point that they
14 effect the outcome. Typically, they are clarification,
15 elaborations or corrections. And that's what we hope to
16 accomplish in this errata.

17 The public comment period is still open. It's
18 open until December 13th. And, of course, the Committee
19 welcomes and encourages comments to continue to be sent
20 in. If necessary, we will incorporate those into a second
21 errata, because we're hoping it is time to issue an errata
22 based on what we have so far in the next couple of days to
23 give the parties ample time to review and become familiar
24 with it.

25 I see from my magic screen here that Dale from

1 the Riverside County Fire Department has joined us. You
2 did submit a letter in response to the PMPD. And we thank
3 you for that. Is there anything you wish to say to us?

4 UNIDENTIFIED SPEAKER: No, other than it's
5 extremely hard to hear you. Thank you for asking.

6 HEARING OFFICER RENAUD: All right. Thank you.
7 Good.

8 And we would now take public comment. Is there
9 anyone from the public in the room who would care to make
10 a comment? Apparently not.

11 Is there anyone on the phone who would care to
12 comment to the Committee today?

13 All right. Any closing comments or questions
14 from Committee members?

15 Mr. Weisenmiller.

16 MR. WEISENMILLER: I'd like to thank everyone for
17 their participation today. Obviously apologize for our
18 audio/visual system and hope in the future we can have it
19 set up to facilitate public involvement more readily. And
20 certainly appreciate everyone's patience and efforts to
21 try to help us to develop a complete record today.

22 HEARING OFFICER RENAUD: Okay. Thank you.

23 Commissioner Douglas.

24 COMMISSIONER DOUGLAS: Like to thank everybody
25 for hanging in with us on the phone.

1 HEARING OFFICER RENAUD: Good. Well, I think
2 that -- unless anybody has thought of anything they wish
3 to add at this point, we'll adjourn this Committee
4 conference. Thank you for your participation.

5 (Thereupon the hearing adjourned at 1:48 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, TIFFANY C. KRAFT, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing hearing was reported in shorthand by me,
7 Tiffany C. Kraft, a Certified Shorthand Reporter of the
8 State of California, and thereafter transcribed into
9 typewriting.

10 I further certify that I am not of counsel or
11 attorney for any of the parties to said hearing nor in any
12 way interested in the outcome of said hearing.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 6th day of December, 2010.

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